



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT

ISSUED TO

FRY'S SPRING BEACH CLUB, INCORPORATED

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code § 62.1-44.15(8a) and (8d) between the State Water Control Board and Fry's Spring Beach Club, Incorporated for the purpose of resolving certain violations of environmental laws and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. "Order" means this document, also known as a Consent Special Order.
6. "FSBC" means Fry's Spring Beach Club, Incorporated.
7. "Facility" means the swimming pool, treatment units, clubhouse and other property which is located at 2512 Jefferson Park Avenue in Charlottesville, Albemarle County, Virginia
8. "DEQ-VRO" means the Department of Environmental Quality Valley Regional Office.
9. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
10. "ppm" means parts per million.
11. "NOV" means Notice of Violation.
12. "Regulation" means the Virginia Pollution Discharge Elimination System ("VPDES") Permit Regulation 9 VAC 25-31-10 et seq.

SECTION C: Findings of Fact and Conclusions of Law

1. FSBC owns the Facility.
2. On May 14, 2008, FSBC experienced an unpermitted discharge of highly chlorinated swimming pool water into an unnamed tributary to Moore's Creek.
3. On May 15, 2008, FSBC notified DEQ of the release of chlorinated pool water.
4. On May 16, 2008, DEQ staff conducted an investigation of the spill which revealed that chlorine shock treated pool water was reaching State waters from an outlet pipe for the pool's french drain system.
5. DEQ staff observed a significant kill of aquatic macro invertebrates in an unnamed tributary to Moore's Creek through a reach of about 600 meters downstream of the outlet pipe. The kill extended downstream to a point about 50 meters upstream of the confluence the unnamed tributary with Moore's Creek. Live midges, scuds, worms and stoneflies were observed upstream of the outlet pipe discharge. No dead organisms were observed in Moore's Creek itself.
6. DEQ sampling documented an in-stream chlorine residual of 0.5 ppm below the outlet pipe discharge and no chlorine residual above the pipe.

Chlorine Measurements on May 16, 2008

Location	Time 11:00	Time 13:30
Pool-house basin	1.0 ppm	0.2 ppm
Pipe entering stream	0.9 ppm	0.2 ppm
Stream above outlet pipe	0.0 ppm	
Stream below outlet pipe	0.5 ppm	0.04 ppm
Culvert 200m downstream of outlet pipe	0.0 ppm	

7. Virginia Code § 62.1-44.5 and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation at 9 VAC 25-31-50 A. stipulate that except in compliance with a VPDES permit issued by the State Water Control Board, it shall be unlawful for any person to discharge sewage, industrial wastes, or other wastes into state waters.

Virginia Code § 62.1-44.3 includes corporations within the definition of “persons”. Fry’s Springs Beach Club is a “person” under the statute. The Code also defines “other wastes” to include any substances that may cause pollution of state waters. “Pollution” is defined by Virginia Code § 62.1-44.3 to include the alteration of state waters in a manner which makes them detrimental to aquatic life. Chlorinated pool water is an “other waste” under the statute.

“State waters” is defined by Virginia Code § 62.1-44.3 to include all waters above and below the surface of the ground and within the Commonwealth. The unnamed tributary to Moore’s Creek is a “state waters”.

The Department has never issued a permit to FSBC for the discharge of pool water. FSBC violated the Code and the VPDES Permit Regulation by discharging chlorinated pool water without a permit issued by the Board.

8. DEQ issued NOV No. 08-06-VRO-001 to FSBC on June 11, 2008, for an unpermitted discharge which resulted in an adverse impact on the receiving stream, without a permit, in violation of VA Code 62.1-44:5 which prohibits such actions without a permit.
9. On June 20, 2008, DEQ met with representatives of FSBC in an informal conference to discuss the violations cited in the NOV and the circumstances that led up to the discharge. According to FSBC, on the evening of Wednesday, May 14, 2008, FSBC shock chlorinated its swimming pool with about 100 lbs. of chlorine granules. Later that evening a downstream neighbor informed the Club’s president of a strong chlorine smell in the unnamed tributary to Moore’s Creek and later of a chlorine residual in the tributary below the outlet pipe that was draining the french drain system under the pool.

As described by FSBC, its swimming pool is underlain by a french drain system which conveys underlying spring waters to the unnamed tributary. FSBC indicated that during this event, apparently, the swimming pool's pumped return system leaked allowing the highly chlorinated swimming pool waters to enter the french drain system and discharge to State waters. During the meeting, DEQ requested a plan and schedule of corrective actions to address the unpermitted discharge.

FSBC asserts that the unpermitted discharge was a onetime event attributed to a broken pipe and was out of FSBC's control.

10. By letters dated July 7, 2008 and July 15, 2008, FSBC submitted to DEQ for review and approval a corrective action plan to make necessary repairs to the pool's pump and drain system to ensure that no further unauthorized discharges occur. Sections of this plan and schedule have been incorporated into Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. § 62.1-44.15(8a) and (8d), orders FSBC, and FSBC agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders FSBC and FSBC voluntarily agrees, to pay a civil charge of **\$3500** within **30 days** of the effective date of the Order in settlement of the alleged violations cited in this Order. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of Virginia" and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

FSBC shall include, as a notation to the payment, that it is being made as a requirement of this Order and shall also include its federal identification number (FIN) with the check, certified check, money order, or cashier's check.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of FSBC, for good cause shown by FSBC, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3)

taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, FSBC admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. FSBC consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. FSBC declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by FSBC to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. FSBC shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. FSBC shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. FSBC shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

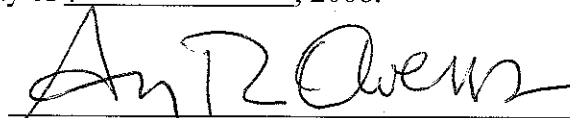
Failure to so notify the Director of the Valley Regional Office within 24 hours of learning of any condition above, which FSBC intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and FSBC. Notwithstanding the foregoing, FSBC agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. FSCB petitions the VRO Director to terminate the Order after it has completed all requirements of this Order, and the Regional Director determines that all requirements of the Order have been satisfactorily completed; or
 - b. The Director, his designee, or the Board may terminate this Order in his or its sole discretion upon 30 days written notice to FSBC.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve FSBC from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By its signature below, the Fry's Spring Beach Club, Incorporated voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 8th day of December, 2008.



Amy T. Owens, Regional Director
Department of Environmental Quality

Fry's Spring Beach Club, Incorporated voluntarily agrees to the issuance of this Order.

By: JMB

Title: President

Date: 10/23/08

Commonwealth of Virginia

City/County of Charlottesville Albemarle

The foregoing document was signed and acknowledged before me this

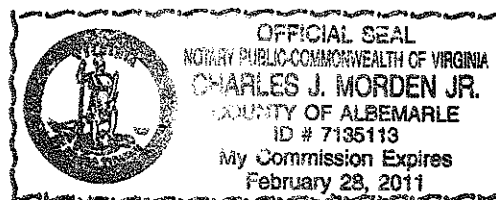
23rd day of October, 2008, by James R Veale,
(name)

who is President of Fry's Spring Beach Club, Incorporated on behalf of the Club.

(title)

Chas. J. Morden Jr.
Notary Public

My commission expires: 2/28/2011



APPENDIX A
SCHEDULE OF COMPLIANCE
FRY'S SPRING BEACH CLUB

1. **By November 30, 2008**, FSBC shall, after closure of the pool, complete the inspection and evaluation of the pool's french drain and return pump systems to isolate leaks and determine what corrective actions are necessary to address those leaks.
2. **By January 31, 2009**, FSBC shall submit to DEQ for review and approval a plan and schedule for corrective actions to ensure that the pool is not the source of any further unpermitted discharges. FSBC shall respond to comments on the plan and schedule **within 30 days** of receipt of written comments. Upon approval, the plan and schedule will be incorporated by reference and enforceable under this Order.